

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TRAVIS HATCHETT,

Plaintiff,

-against-

T&M TRANSPORTATION, LLC., BIRON WILLIAM
HAILEY and ABDIKADIR ALI LIBAN

Defendants.

ANSWER TO
AMENDED VERIFIED
COMPLAINT

Case Number:
09 CIV. 8810 (PKC)

-----X
TRAVIS HATCHETT,

Plaintiff,

-against-

MIDWEST CARRIERS, LLC,

Defendant.

10 Civ. 686 (PKC)

-----X
Defendant T&M TRANSPORTATION, LLC., by its attorneys, KOPFF,
NARDELLI & DOPF LLP, answers the plaintiff's Amended Verified Complaint
as follows, upon information and belief:

1. Denies knowledge or information sufficient to form a
belief as to each and every allegation contained in the paragraph of the
Amended Verified Complaint designated "1".

2. Denies each and every allegation contained in the
paragraph of the Amended Verified Complaint designated "2", except
admits that T&M TRANSPORTATION, LLC. was a corporation organized under
the laws of the State of Mississippi.

3. Denies each and every allegation contained in the
paragraph of the Amended Verified Complaint designated "3".

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "4".

5. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "5".

6. Admits the allegations contained in the paragraph of the Amended Verified Complaint designated "6".

7. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "7".

8. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "8", except admits that T&M TRANSPORTATION, LLC. was the owner of a 2006 Peterbilt motor vehicle with VIN # 1XP5DB9XX6N879460.

9. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "9".

10. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "10", except admits that T&M TRANSPORTATION, LLC. was the owner of a 2006 Peterbilt motor vehicle with VIN # 1XP5DB9XX6N879460.

11. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "11".

12. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "12".

13. Admits the allegations contained in the paragraph of the Amended Verified Complaint designated "13".

{A0346257.DOC}

14. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "14", except begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

15. Admits allegations contained in the paragraph of the Amended Verified Complaint designated "15".

16. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "16".

17. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "17".

18. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "18", except begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

19. Admits the allegations contained in the paragraph of the Amended Verified Complaint designated "19".

20. Admits the allegations contained in the paragraph of the Amended Verified Complaint designated "20".

21. Admits the allegations contained in the paragraph of the Amended Verified Complaint designated "21".

22. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "22"

23. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "23".

24. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "24".

25. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "25".

26. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "26".

27. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "27".

28. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "28".

29. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "29".

30. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "30".

31. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "31".

{A0346257.DOC}

32. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "32".

33. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "33".

34. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "34".

35. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "35".

36. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "36".

37. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the Amended Verified Complaint designated "37".

38. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "38".

39. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "39".

40. Admits the allegations contained in the paragraph of the Amended Verified Complaint designated "40".

41. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "41".

42. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "42", except begs

{A0346257.DOC}

leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

43. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "43", except begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

44. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "44".

45. Denies each and every allegation contained in the paragraph of the Amended Verified Complaint designated "45".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
DEFENDANT T&M TRANSPORTATION, LLC.
ALLEGES UPON INFORMATION AND BELIEF

46. Whatever injuries plaintiff may have sustained at the time and place alleged in the Amended Verified Complaint were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of the plaintiff and without any negligence or fault or want of care on the part of the defendant and that any award will thereby be proportionately diminished or barred.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
DEFENDANT T&M TRANSPORTATION, LLC.
ALLEGES UPON INFORMATION AND BELIEF

47. Upon information and belief, the plaintiff failed to wear a seat belt although the vehicle which the plaintiff was occupying was equipped with same, and the plaintiff's alleged injuries are a direct and proximate result of plaintiff's failure to use said seat belt.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
DEFENDANT T&M TRANSPORTATION, LLC.
ALLEGES UPON INFORMATION AND BELIEF

48. The plaintiff did not sustain serious injury as defined by Article 51 of the Insurance Law of the State of New York and his exclusive remedy is confined and limited to the benefits and provisions of the Insurance Law of the State of New York.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
DEFENDANT T&M TRANSPORTATION, LLC.
ALLEGES UPON INFORMATION AND BELIEF

49. The plaintiff did not sustain economic damage as defined by Article 51 of the Insurance Law of the State of New York and his exclusive remedy is confined and limited to the benefits and provisions of the Insurance Law of the State of New York.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
DEFENDANT T&M TRANSPORTATION, LLC.
ALLEGES UPON INFORMATION AND BELIEF

50. Plaintiff failed to take reasonable steps in an effort to mitigate his damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
DEFENDANT T&M TRANSPORTATION, LLC.
ALLEGES UPON INFORMATION AND BELIEF

51. Any damages awarded to plaintiff are subject to a set off pursuant to CPLR 4545, to the extent plaintiff received any reimbursement of his damages through any collateral source provider including but not limited to insurer, Workers' Compensation or Social Security/Disability.

AS AND FOR A CROSS-CLAIM AGAINST THE DEFENDANT
ABDIKADIR ALI LIBAN, THE DEFENDANT,
T&M TRANSPORTATION, LLC. DEMANDS:

52. That on the authority of Dole v. Dow Chemical, 30 N.Y.2d 143; Rogers v. Dorchester, 32 N.Y.2d 553; Kelly v. Diesel Construction, 35 N.Y.2d 1, if the plaintiff sustained the injuries and
{A0346257.DOC}

damages in the manner and at the time and place alleged, and if it is found that the answering defendant is liable to plaintiff herein, then upon said allegations of the Amended Verified Complaint and upon the pleadings and evidence, said damages were sustained by reason of the sole, active, and primary carelessness and/or recklessness and/or negligence and/or affirmative acts of omissions or commission of the defendant, ABDIKADIR ALI LIBAN, and the answering defendant is entitled to complete indemnification from any judgment over against the defendant, ABDIKADIR ALI LIBAN herein, for all or part of any verdict or judgment that plaintiff may recover against said answering defendant, and/or in the event that judgment over is not recovered on the basis of full indemnification, then the answering defendant demands judgment over and against the defendant, ABDIKADIR ALI LIBAN herein on the basis of an apportionment of responsibility for the alleged occurrence for all or part of any judgment or verdict that plaintiff may recover against said answering defendant, and that all of the provisions of limitation of liability under the Terms of Article Sixteen of the CPLR are pleaded herein by the cross-claiming defendant, together with costs, disbursements and reasonable attorneys' fees.

PLEASE TAKE NOTICE, that defendant hereby demands pursuant to CPLR 3011 that defendant, ABDIKADIR ALI LIBAN serve an answer to this cross-claim.

WHEREFORE, defendant T&M TRANSPORTATION, LLC. demands judgment dismissing the Amended Verified Complaint herein, and judgment over and against defendant, ABDIKADIR ALI LIBAN, as to the Cross-Claim, together with the costs and disbursements of this action.

Dated: New York, New York
May 10, 2010

{A0346257.DOC}

Yours, etc.,

KOPFF, NARDELLI & DOPF LLP

By: 

Marc J. Lust (5442)
Attorneys for Defendant
T&M TRANSPORTATION, LLC.
440 Ninth Avenue
15th Floor
New York, New York 10001
(212) 244-2999

TO: KELNER & KELNER, ESQS.
Attorneys for Plaintiff
140 Broadway, 37th Floor
New York, New York 10005
(212) 425-0700

SCHOENFELD, MOORELAND & REITER, P.C.
Attorneys for Defendant
ABDIKADIR ALI LIBAN
61 Broadway, 18th Floor
New York, New York 10006

BIRON WILLIAM HAILEY
Defendant
154 County Road 1529
Baldwyn, Mississippi 38824

MIDWEST CARRIERS, LLC
Defendant
2200 Minnehaha Avenue
Minneapolis, Minnesota 55404

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

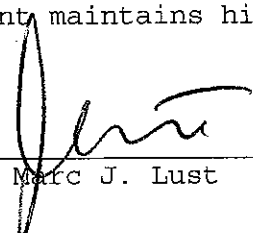
Marc J. Lust, being duly sworn deposes and says:

That he is the attorney representing the defendant T&M
TRANSPORTATION, LLC.

That he has read the attached Answer and the same is true to
his own belief, and as to those matters, he believes them to be true to
the best of his knowledge.


That deponent's sources of information are files/records
maintained by his office in the course of handling this case.

That this verification is made by deponent because his client
does not reside in the county where deponent maintains his office.



Marc J. Lust

Sworn to before me this
11th day of May, 2010.



NOTARY PUBLIC

MARGARET C. GAY
Notary Public, State of New York
Registration #01GA6793355
Qualified in Nassau County
My Commission Expires Jan. 31, 2011

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Ellen Scott, being duly sworn, deposes and says: That she is not a party to this action. That she is over 18 years of age and resides in Brooklyn, New York.

On May 11, 2010, I served the within **ANSWER TO AMENDED VERIFIED COMPLAINT AND VARIOUS DISCOVERY DEMANDS** upon:

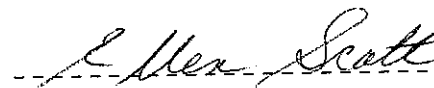
KELNER & KELNER
Attorneys for Plaintiff
140 Broadway, 37th Floor
New York, NY 10005

BIRON WILLIAM HAILEY
Defendant
154 Country Road 1529
Baldwyn, MS 38824

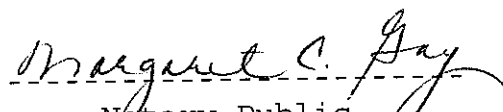
SCHOENFELD, MOORELAND & REITER, P.C.
Attorneys for Defendant
ABDIKADIR ALI LIBAN
14 Wall Street, 27th Floor
New York, NY 10005

MIDWEST CARRIERS, LLC
Defendant
2200 Minnehaha Avenue
Minneapolis, MN 55404

by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State addressed to each of the following person(s) at the last known address set forth after each name.


Ellen Scott

Sworn to before me this
11th day of May, 2010


Notary Public

MARGARET C. GAY
Notary Public, State of New York
Registration #01GA6793355
Qualified in Nassau County
My Commission Expires Jan. 31, 2011,